

ARMED SERVICES BOARD OF CONTRACT APPEALS

Appeal of --)
)
Enrique (Hank) Hernandez) ASBCA No. 51763
)
Under Contract No. 000000-00-0-0000)

APPEARANCE FOR THE APPELLANT: Mr. Enrique (Hank) Hernandez

APPEARANCE FOR THE GOVERNMENT: Rexford T. Bragaw, III, Esq.
Assistant General Counsel
Defense Commissary Agency
Fort Lee, VA

OPINION BY ADMINISTRATIVE JUDGE THOMAS
ON MOTION TO DISMISS FOR LACK OF JURISDICTION

On 12 June 1993, appellant and Goodfellow Air Force Base commissary entered into an agreement allowing him to bag groceries for customers in return for tips. Either party could terminate the agreement “for cause” including “[a] pattern of customer complaints regarding [appellant].” On 25 June 1998, appellant was terminated from his “bagger position” because of complaints of discourteous service. On 8 July 1998, appellant wrote a commissary official requesting his assistance. Appellant stated that he had been “fired” from his bagger position. He requested “an informal resolution for reconsideration of the intent to fire me as a bagger.” He stated that the action taken was “a breach of contract” but did not identify any monetary damages. On 17 September 1998, appellant filed a notice of appeal with the Board allegedly pursuant to the Contract Disputes Act of 1978 (CDA), 41 U.S.C. §§ 601 *et seq.* Appellant alleged that the amount in dispute was “Unknown, to be determined.” On 5 August 1999, appellant filed an amended notice of appeal requesting damages in the amount of \$90,650. The notice does not disclose any basis for this amount. (R4, tabs 1, 4, 6)

The Government has moved to dismiss the appeal for lack of jurisdiction upon the ground *inter alia* that appellant failed to submit a claim to a contracting officer as required by the CDA. We agree. Appellant’s 8 July 1998 letter, the only possible “claim” in the record, does not qualify as a claim under the CDA. Appellant requested informal resolution through reconsideration of the decision to terminate him from his bagger position, and did not identify any monetary damages. Appellant has now amended his notice of appeal to request damages in the amount of \$90,650. This amendment is ineffectual, however, to cure the jurisdictional defect of failing to submit a claim as required by the CDA. *W. H. Moseley Co., Inc. v. United States*, 677 F.2d 850

(Ct. Cl. 1982), *cert. den.*, 459 U.S. 836 (1983). In view of this conclusion, we do not reach the Government's other arguments.

The appeal is dismissed without prejudice to the submission of a proper claim to the contracting officer.

Dated: 20 January 2000

EUNICE W. THOMAS
Administrative Judge
Armed Services Board
of Contract Appeals

I concur

I concur

MARK N. STEMLER
Administrative Judge
Acting Chairman
Armed Services Board
of Contract Appeals

ALLAN F. ELMORE
Administrative Judge
Acting Vice Chairman
Armed Services Board
of Contract Appeals

I certify that the foregoing is a true copy of the Opinion and Decision of the Armed Services Board of Contract Appeals in ASBCA No. 51763, Appeal of Enrique (Hank) Hernandez, rendered in conformance with the Board's Charter.

Dated:

EDWARD S. ADAMKEWICZ
Recorder, Armed Services
Board of Contract Appeals